

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM J. JONES,
CDC #V-27774,

vs.

Plaintiff,

JOHN DOVERY, G.T. JANDA, L.E.
SCRIBNER, M.D. BOURLAND,
M. LEVIN, M. CORREA, L.C. ORDUNO,
D. SAWTELL, J. KELLERMAN,
MADDEN, T. OCHOA, KILPA,
ZENDEJAS, and V. BACH,

Defendants

CASE NO. 06cv1979-LAB (AJB)

**ORDER DISMISSING ACTION AS
TO DEFENDANTS DOVERY,
SAWTELL, KILPA, AND
ZENDEJAS**

On January 30, 2008, the Court ordered Plaintiff to show cause why this action should not be dismissed as to Defendants Dovery, Sawtell, Kilpa, and Zandejas because of Plaintiff's failure to serve them with process within 120 days as required by Fed. R. Civ. P. 4(m).

Plaintiff has twice attempted service on these four Defendants. On the first attempt, service was returned unexecuted for relatively trivial reasons, which concerns the Court. For example, Plaintiff directed the Marshals to serve "D. Sawtell, registered nurse," and "M. Zendejas, correctional officer" but a notation on the return of service indicates the litigation coordinator notified the Marshals that service was not accepted because the Defendants'

1 initials were incorrect. Although a summons was issued as to Defendant Kilpa, no return of
2 service was filed. These possible defects, however, were cured by permitting Plaintiff a
3 second opportunity to serve these four Defendants.

4 On the second attempt, Plaintiff merely requested the papers be served on the District
5 Attorney. The summonses directed to these Defendants were returned unexecuted on June
6 22, 2007 with a note from the Deputy District Attorney assigned to the case, explaining she
7 had not been asked to represent any of these four Defendants and could not accept service
8 on their behalf. In its order of January 30, 2008, the Court also noted that since that time,
9 Plaintiff has made no efforts to serve these Defendants.

10 In response to the Order to Show Cause, Plaintiff argues these Defendants should
11 not be dismissed because doing so would give them a sense of being "above the law."
12 Plaintiff also argues he was confused about how to serve these Defendants and was not
13 able to obtain these four Defendants' addresses, which he believes shows good cause for
14 failure to serve. Plaintiff now seeks to compel the California Department of Corrections and
15 Rehabilitation to disclose these four Defendants' addresses so he can serve them.

16 Plaintiff's ignorance of or confusion about service requirements does not constitute
17 "good cause" for failure to serve. *Townsel v. Contra Costa County*, 820 F.2d 319, 320 (9th
18 Cir. 1987). This is true even though he is not represented by counsel, because "[p]ro se
19 litigants must follow the same rules of procedure that govern other litigants." *King v. Atiyeh*,
20 814 F.2d 565, 567 (9th Cir. 1987). Plaintiff now seeks discovery to learn where these four
21 Defendants can be served, but there is no reason he could not have sought discovery in
22 June, 2007, when he first learned service had not been effected. Because Plaintiff knew
23 service had not been effected on these four Defendants, it was his responsibility to take
24 steps to remedy this.

25 While . . . incarcerated plaintiffs proceeding in forma pauperis may rely on
26 service by the U.S. Marshals, a plaintiff may not remain silent and do nothing
27 to effectuate such service. At a minimum, a plaintiff should . . . attempt to
remedy any apparent service defects of which a plaintiff has knowledge.

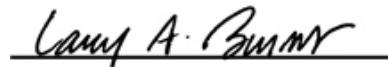
28 *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987).

1 The Court finds Plaintiff has not shown good cause for failure to serve these four
2 Defendants. Claims against Defendants Dovery, Sawtell, Kilpa, and Zandejas are therefore
3 **DISMISSED WITHOUT PREJUDICE** because of Plaintiff's failure to timely serve them with
4 process.

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6 **IT IS SO ORDERED.**

7 DATED: February 22, 2008

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9 **HONORABLE LARRY ALAN BURNS**
10 United States District Judge

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